

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

For Approval and Signature:

- =====

5. Whether it is to be circulated to the Civil Judge? No. :

MOHAMED ISMAIL @ KALU JARZEN NURMOHAMED MITHAWALA

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/09/1999

ORAL JUDGEMENT

1. Heard learned advocate Mr. P.S. Chapaneri for Mr. M.H. Barejia on behalf of the petitioner and learned A.G.P. Mr. Samir Dave, on behalf of the respondent Nos. 1 to 3.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ or direction to quash and set aside the detention order dtd. 10/11/98 passed by the respondent NO. 2 - Police Commissioner, Surat City, against the petitioner in exercise of power conferred under Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short).

3. The petitioner has produced the impugned order vide Annexure - A and Committal Order vide Annexure - B. The grounds of detention served to the petitioner, under Sec. 9 (1) of PASA, are produced at Annexure - C. Perusal of grounds of detention indicate that the petitioner was found to have been involved in three criminal cases registered at Salabatpura Police Station dtd. 8/8/98, 21/8/98 and 3/9/98, respectively. All the offences are in respect to the offences made punishable under Sections 454, 457, 380 read with Sec. 114 I.P.C. That the petitioner was arrested and ultimately released on bail on 12/9/98 in respect to said incidents. The ground of detention also indicate that two witnesses on assurance of anonymity have supplied information against the petitioner in respect to incident dtd. 14/7/97 and 22/9/98. The statement of the said witnesses has been recorded on 27/9/98 and 28/9/98 respectively.

4. On the basis of above stated material, respondent NO. 2 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Sec. 2 (c) of PASA. That his activity has been and is likely to prejudicial affect the maintenance of public order. That resort to general provisions of law is insufficient to prevent the petitioner from continuing his nefarious and anti-social activities and as such, exercise of powers under Sec. 3 (1) of PASA is necessary, hence, the impugned order is passed.

5. Learned advocate Mr. P.S. Chapaneri has assailed the order on numerous grounds, however, he has restricted the contest on first point and submitted that there is an inordinate delay in taking impugned action of passing the detention order dtd. 10/11/98 and the last activity alleged to have been recorded by the authority. According to Shri Chapaneri, against the petitioner, cases are registered in the month of August and September, 1998, while the instances stated by the anonymous witnesses are in respect to incident dtd. 14/7/98 and 27/9/98. It is further submitted that despite the service of rule of the petition, the affidavit filed by the Additional D.G.P., Computer-cum-State Crime Record Bureau, Gandhinagar, is totally silent about explanation in respect to delayed action taken against the petitioner by passing the impugned order.

6. As against that, learned A.G.P. Mr. Samir Dave has contended that the alleged criminal activity of the petitioner for which crime has been registered at Salabatpura Police Station being in September, 1998 and investigation being pending, the administrative process would justify the lapse of time till November, 1998. As such it cannot be said to be a delayed action. He has further submitted that the petitioner has failed to raise specific plea in the petition regarding the delayed action and as such the respondents have not given any specific explanation to explain the delay.

7. It may be noted that in a series of decisions different High Courts including this High Court and the Supreme Court have laid down the rule that preventive detention is an action which is culminated on a live link of alleged prejudicial activity of the petitioner. If on account of lapse of time, such a live link is snapped, unless the delay in taking action has been satisfactorily explained, the subjective satisfaction reached by the detaining authority while passing the impugned order could not be said to be passed with due application of

mind and as such the order would be vitiated.

8. In the instant case, Crime Register NO. 420/98 was registered on 8/8/98, while the subsequent two offences are registered on 21/8/98 and 3/9/98, respectively. Thus, after 3rd September, 1998, there is no registered offence against the petitioner. The witnesses who, on assurance of anonymity have stated that the incidents are of 14/7/98 and 28/8/98. If the said dates are considered, by no stretch of imagination it could be held that live link between the alleged criminal activity has been continued till 10/11/98, when the impugned order of detention is passed against the present petitioner. Furthermore, as regards the contention raised on behalf of the respondents that no specific ground has been raised, it has to be noted that in the matter of Mohinuddin Vs. District Magistrate, Beed and Others, reported vide AIR 1987 Supreme Court 1977, the Hon'ble Supreme Court has observed in para 4 as under ;

"It is not proper to disallow the writ petition on the ground of imperfect pleadings. Normally, writ petitions are decided on the basis of affidavits and the petitioners cannot be permitted to raise grounds not taken in the petition at the hearing. The same rule cannot be applied to a petition for grant of a writ of habeas corpus. It is enough for the detenu to say that he is under wrongful detention and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. It is well-settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accordance with the constitutional safeguards embodied in Art. 22 (5)."

Following the abovementioned dictum, I hold that the impugned order is vitiated on account of delayed action taken by the authority and it deserves to be quashed and set aside.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dtd. 10/11/98 passed by the respondent No.2 against the petitioner is quashed and set aside and the petitioner - detenu

Mohamed Ismail alias Kalu Tarzen Nurmoahmed Mithawala,
is ordered to be set at liberty forthwith, if not
required in any other case.

Rule is made absolute. D.S. Permitted.

Rafik*